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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1308

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Petitioner,

v.

JOSEPH A. CALIFANO, JR., etc.; et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page
Preliminary Statement	1
Opinion Below	2
Jurisdiction	2
Questions Presented	2-3
Constitutional and Statutory Provisions Involved	3-9
Statement of the Case	9-17
Reasons for Granting the Writ	17-29
Conclusion	30
Appendix	31-78
Certificate of Service	79

CITATIONS

Cases:

Coyle v. Oklahoma, 221 U.S. 559 . . . 24

Florida v. Matthews, 526 F.2d 319 (C.A. 5) 24

Juidice v. Vail, 430 U.S. 327, 334 . 23

National League of Cities v. Usery, 426 U.S. 833 . . 17,19,20,21,23,24,25

Oklahoma v. United States Civil Service Commission, 330 U.S. 127 . 24

Cases Continued: Page

Shapiro v. Thompson, 397 U.S. 618 . . 22
Shelton v. Tucker, 364 U.S. 479 . . . 22

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PRELIMINARY STATEMENT

The Petitioner, Florida Department of Health and Rehabilitative Services (HRS), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on November 27, 1978.

OPINION BELOW

The opinion of the Court of Appeals is reported at 585 F. 2d 150 (5th Cir. 1978). That opinion affirms the decision of the United States District Court for the Northern District of Florida reported at 449 F. Supp. 274 (N.D. Fla. 1978).

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on November 27, 1978. No request for rehearing was filed. This petition for certiorari was filed within 90 days of the date of entry of the judgment of the Court of Appeals for the Fifth Circuit. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether the federal government can require a state to structure its internal

administrative organization in a particular fashion in order to continue receiving federal funds for a vital social service program without violating the Tenth Amendment to the United States Constitution.

2. Whether the Intergovernmental Cooperation Act of 1968 permits the Secretary of the Department of Health, Education and Welfare to waive the organizational unit requirement of the Vocational Rehabilitation Act of 1973.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

United States Code, Title 29:

§721(a)(2)(A) Annual State plans; gereral and specific requirements

Because of length of text, this section is reproduced at pages A-75 to A-76 of the Appendix.

United States Code, Title 42:

§4214 Eligible State agency

Because of length of text, this section is reproduced at pages A-77 to A-78 of the Appendix.

Florida Statutes, Chapter 20:

§20.19(1) Purpose

The purpose of the reorganization of the Department of Health and Rehabilitative Services is to integrate the delivery of all health, social, and rehabilitative services offered by the state to those citizens in need of assistance, herein referred to as "clients." * * *

Florida Statutes, Chapter 20:

§20.19(3)(a) Assistant Secretaries

The secretary shall appoint an assistant secretary for operations, an

assistant secretary for program planning and development, and an assistant secretary for administrative services, each of whom shall serve at the pleasure of, and be directly responsible to, the secretary. The secretary shall appoint a deputy assistant secretary for program planning and a deputy assistant secretary for state health planning and development, each of whom shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for program planning and development.

Florida Statutes, Chapter 20:

§20.19(3)(b) Assistant Secretaries

The assistant secretary for operations shall be responsible for, and have line authority over, all service program operations of the department, including the management of all institutions and residential treatment programs, assuring that such programs comply with federal and state laws and regulations, and such other duties as

are assigned to him by the secretary. However, he shall delegate as much authority for the administration of service programs within the districts as practicable to the respective district administrators. The assistant secretary for operations shall have line authority over all departmental employees engaged in providing services directly to the client or support services therefor.

Florida Statutes, Chapter 20:

§20.19(3)(c) Assistant Secretaries

The assistant secretary for program planning and development shall have responsibility for general statewide supervision of the administration of service programs operated by the department and such other program development and planning duties as are assigned to him by the secretary.

* * *

Florida Statutes, Chapter 20:

§20.19(3)(c)2.e. Vocational Rehabilitation Program Office

The responsibilities of this office encompass all vocational rehabilitation programs operated by the department.

Florida Statutes, Chapter 20:

§20.19(4)(b) Service Districts

The secretary shall appoint a district administrator for each of the service districts. Each district administrator shall serve at the pleasure of the secretary and shall be directly responsible to the assistant secretary for operations. Each district administrator shall have direct line authority over all departmental programs assigned to the district. In addition to those responsibilities assigned by law, the district administrator shall carry out those duties delegated to him by the assistant secretary for operations. The salary of this position shall be

comparable to that of a division director of a state agency.

Florida Statutes, Chapter 20:

§20.19(4)(c)1 Service Districts

The duties of the district administrator shall include, but not be limited to:

1. Ensuring that the administration of all service programs is carried out in conformity with statewide service plans and any other policies, procedures, and guidelines established by the secretary.

Florida Statutes, Chapter 20:

§20.19(4)(e)1 Service Districts

There may be program supervisors in each district who shall serve in a line capacity to the district administrator and report directly to the district administrator or his designee. Program supervisors shall be appointed by the district administrator in conformity with qualifications established through state personnel system procedures. Program supervisors may be employed on

a full-time, part-time, or fee-for-service contractual basis. The duties of a program supervisor shall include, but not be limited to:

1. Administering district service programs in conformity with statewide policies, procedures, and guidelines established by the secretary.

STATEMENT OF THE CASE

This Petition arises from a judgment of the Circuit Court of Appeals for the Fifth Circuit affirming the decision of the District Court for the Northern District of Florida sustaining an administrative decision of the Commissioner of Rehabilitation Services Administration (RSA), a unit of the Department of Health, Education and Welfare (HEW), disapproving Florida's plan for the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, 29 U.S.C. §§701 et seq. (applicable portion cited herein), and terminating Florida's

entitlement to receive federal funds under that Act. The District Court judgment also upheld the determination of the Secretary of HEW that he is without power, under the Intergovernmental Cooperation Act, 42 U.S.C. §§4201 et seq. (applicable portion cited herein), to waive the requirements of the Rehabilitation Act found by the Commissioner to have been violated by the Florida plan.

This is one of the most important and significant cases to reach the courts in the field of public administration. The unusual interest in the issues exhibited by the several amici who submitted briefs to the Circuit Court of Appeals in support of the Petitioner's position, and the active role throughout the litigation played by the National Rehabilitation Association (NRA), a nationwide organization, attests to the broad significance of this case for the administration of public benefit programs generally, and rehabilitation programs in particular. The case is of first impression, involving federal

statutory provisions not previously considered by the courts.

In 1975, Florida reorganized HRS for the purpose of "integrating[ing] the delivery of all health, social and rehabilitative services offered by the state to those citizens in need of assistance . . ." [Reorganization Act of 1975, Fla. Stat. Ann., §20.19(1) (see appendix)]. The concept was an attempt to deal comprehensively with the needs of those served by Petitioner, many of whom required services under several programs, rather than to have them touched separately by different divisions functioning independently and without regard to other available services. To accomplish this, the Petitioner was divided into three functional divisions -- Program Planning and Development, Operations, and Administration. Fla. Stat. Ann. §20.19(3)(a).

The Assistant Secretary for Program Planning and Development is responsible for "general statewide supervision of the

administration of services programs operated by the department." Fla. Stat. Ann., §20.19(3)(c). Within the Program Planning and Development Division are program offices for each program area. The Vocational Rehabilitation (VR) Program Office has plenary authority for the State's VR program. Fla. Stat. Ann., §20.19(3)(c)2.e. This office is headed by a full-time VR Program Director.

Under the reorganized Petitioner, the VR Program Director is responsible for VR policy and for supervision of the administration of VR programs. At the District level, the VR Program Supervisor is responsible for day-to-day implementation of these programs. Full-time professional rehabilitation personnel work under the Program Supervisor. The District Administrator and the Assistant Secretary for Operations supervise these District level personnel and are bound to operate the program in conformance with state and federal law. The treatment of VR is

identical to that of the seven other major program areas within the Department's responsibility. Fla. Stat. Ann. §§20.19 (3)(b), (4)(b), (c) and (e).

Shortly after the State Reorganization Act was enacted in June 1975, Petitioner submitted its annual VR plan for fiscal 1976 to RSA. There followed several months of negotiations concerning the compatibility of Florida's plan, which reflected the organizational changes mandated by state law, with the federal statute. In January, 1976, Petitioner submitted a revised plan but in March, 1976, the RSA Commissioner formally notified Petitioner of his intention to disapprove it on the ground that it did not confer authority over field operations to the head of the VR unit.

In the hearing RSA, represented by the HEW General Counsel's office, maintained that Petitioner's plan failed to satisfy federal standards because the VR Program Director did not have "line authority" over staff providing VR services at the District level; because he lacked adequate

authority to administer the VR program; and because the plan did not specify "clear lines" of authority for VR program administration. NRA participated in the hearing in support of the RSA position. The Administrative Law Judge made findings in accordance with the RSA position and recommended a decision adverse to Petitioner. Thereafter, after further briefing and argument, the RSA Commissioner on January 19, 1977, entered a final decision in accordance with the Law Judge's recommendations. The Commissioner acknowledged the considerable evidence on the question whether Florida's plan provided sufficient opportunity for the Program Director to exercise responsibility for the program notwithstanding the lack of "actual authority" over District level operations, and conceded that on this question "the record might support a finding either way." But he declined to resolve the question, holding instead that the federal statute cannot be satisfied where the responsibility for establishing

policy and enforcing it is "not accompanied by actual authority over operations."

The Intergovernmental Cooperation Act of 1968, 42 U.S.C. §§4214, authorizes any federal agency head to waive a requirement that a single state agency or multimember board or commission be designated to administer any federal grant program, where it is shown that the provision prevents establishment of the most effective and efficient organizational arrangements within the state government, and waiver would not endanger the objectives of the federal grant program.

On January 30, 1977, following the adverse decision by the RSA Commissioner in the plan disapproval proceeding, Governor Askew requested HEW Secretary Califano, who had assumed office subsequent to the final disapproval decision, to exercise his authority under this and another statute not under consideration here to waive the requirements of the Rehabilitation Act that had been the

basis for the disapproval of the State's plan. The Secretary's response expressed the view that states should have more latitude than at present to organize and manage federally funded programs. But he denied the waiver requests on the sole ground that the requested waivers were not authorized by the statutes cited. His conclusion was that both statutes were confined to waiver of "sole state agency" requirements and did not reach "organizational unit" requirements such as that contained in §721(a)(2) of 29 U.S.C.

Following denial of the waivers, suit was instituted. Petitioner sought an order setting aside the disapproval determination of the RSA Commissioner; a declaratory judgment that the HEW Secretary had authority to grant the waiver requested by Petitioner; and a finding that the federal requirements were violative of the Tenth Amendment. Additional points were addressed which are not a part of this petition.

On cross-motions for summary judgment, the District Court decided all issues in favor of HEW and intervenor NRA.

An appeal was timely taken to the Court of Appeals for the Fifth Circuit. That Court's decision is the subject of this Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

1. THE DISAPPROVAL OF FLORIDA'S PLAN INVADES ITS RIGHTS TO CONTROL ITS INTERNAL ORGANIZATION PROTECTED BY THE TENTH AMENDMENT.

Throughout this proceeding, the Petitioner has advanced the contention that disapproval of its VR plan and threatened withdrawal of federal funding unless it changes its internal structure constitutes an infringement of its rights under the Tenth Amendment to the Constitution. The argument is supported by this Court's landmark decision in National League of Cities v. Usery, 426 U.S. 833 (1976), where federal restrictions that would have directly displaced the states' "freedom to

structure integral operations in areas of traditional governmental functions" were held unconstitutional. 426 U.S. at 852.

The case at bar presents the issue on which this Court deferred ruling: What protections the Tenth Amendment creates for the States, as States, challenging a Congressional enactment under the Spending Clause of the Constitution. Id., at 852, n. 17.

The controversy in the instant case turns on whether the single organizational unit requirement of the Rehabilitation Act precludes a state from enacting a statute which creates a "generalist" district administrator within the state administrative structure, who has some authority over vocational rehabilitation as well as other health and social service programs. The Petitioner asserts that Congress has authorized HEW to waive the single organizational unit requirement; and, even if not, the termination of federal grant-in-aid funds to Florida for failure of the

State to abide by an internal organizational requirement imposed by federal regulation invades rights guaranteed to the State under the Tenth Amendment.

It is clear that National League of Cities v. Usery creates substantive rights of states as states sufficient to exclude states from any national regulation under the Commerce Clause. The essence of National League of Cities is that states have the right to choose how the states' integral governmental functions will be performed. Speaking for the plurality, Justice Rehnquist said:

> "If Congress may withdraw from the states the authority to make these fundamental employment decisions upon which their systems for performance of these [integral governmental] functions must rest, we think there would be little left of the State's 'separate and independent existence . . .' [T]he dispositive factor is that Congress has attempted to exercise its Commerce Clause authority to prescribe minimum wages and maximum hours to be paid by the States in their capacities as sovereign governments. In so doing, Congress has sought to wield its power in a fashion

> that would impair the States' 'ability to function effectively within a federal system . . .' This exercise of Congressional authority does not comport with the Federal system of government embodied in the Constitution. Id., 857 (emphasis supplied, citations omitted).

Usery held that Congress was without authority under the Commerce Clause to dictate to the states how the state would carry out integral governmental activities -- these choices being exclusively state choices. This Court should balance the respective national interest in Petitioner's internal administrative structure against the state interest at stake.

Were Petitioner offending paramount national interests by discriminating against racial minorities, or by utilizing vocational rehabilitation funds to serve ineligible clients, or by requiring clients to satisfy a residency requirement, then the challenged national requirement should prevail. But such is not the case. The only national interest at stake is minimal, at best. In contrast, Petitioner's interest in organizing its internal government structure as it

chooses is substantial. Permitting a federal government veto of a state's internal governmental structure should not be countenanced in our constitutional federal system.

The constitutional protection of Petitioner's sovereignty via the Tenth Amendment is comparable to an individual's protestions via the First Amendment. The Court should employ the familiar balancing tests adopted for First Amendment analyses in deciding this Tenth Amendment case.

Justice Blackmun's concurrence in Usery lends weight to the balancing approach suggested by the State in the instant case. In his view, the Court "adopts a balancing approach, and does not outlaw federal power in areas . . . where the federal interest is demonstrably greater." National League of Cities v. Usery, supra, at 852.

The Petitioner urges that the requirement that a state have a "single organizational unit" in its vocational rehabilitation program be subjected to the familiar

two-pronged test: Does the requirement show a compelling and substantial national interest in requiring a state to have such an internal organizational structure? See, e.g., Shapiro v. Thompson, 397 U.S. 618 (1969). Even if it does, has the national government demonstrated that no less intrusive means on state sovereignty is available which will accommodate the national purpose? See, e.g., Shelton v. Tucker, 364 U.S. 479 (1960).

In its application of the Rehabilitation Act of 1973, 29 U.S.C. §721(a)(2)(A), HEW has unconstitutionally intruded upon policy choices of state sovereignty reserved by the Tenth Amendment to state decision. Petitioner has the right, authority, indeed duty, to organize its internal government in a manner which will deliver services efficiently, effectively and equitably. Petitioner cannot be penalized by HEW's withholding vocational rehabilitaiton funds for Petitioner's exercise of this fundamental right.

Our federal system requires that Petitioner's choice as to its internal governmental structure be upheld. Our Nation is founded upon

> "[A] recognition that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States are left free to perform their separate functions in their separate ways." Juidice v. Vail, 430 U.S. 327, 334 (1977) (citations omitted).

The Constitution requires that the Rehabilitation Act not supplant Petitioner's policy choice as to the internal organization of Petitioner's vocational rehabilitation administrative structure.

National League of Cities v. Usery, supra, requires that some deference be given to the states when Congress sets the conditions under which national grant-in-aid funds will flow to the states. It makes a mockery to call the states "sovereigns" if Congress has unbridled discretion to establish onerous and intrusive conditions to which states must

submit in order to receive sorely needed funds to provide sorely needed public services to their citizens.

The Commissioner and the District Court distinguished the Usery decision on the ground that it involved direct limitations on state power whereas this case involves conditions to the federal spending power. Oklahoma v. United States Civil Service Commission, 330 U.S. 127 (1947), and Florida v. Matthews, 526 F.2d 319 (5th Cir. 1976), were cited as establishing the plenary authority of Congress to impose conditions on federal grants which, if accepted, might significantly impinge on state authority and discretion.

No prior spending power case has involved the kind of deep intrusion into state internal organization and structure that is presented in this case. The Supreme Court long ago recognized the limits on Congressional power to impose conditions telling state governments how they should be organized. Coyle v. Oklahoma, 221 U.S. 559 (1911). Whether

the spending power would justify conditions that seriously impair reasonable state internal governmental organization measures has never been decided and, especially in light of the Usery decision, is most doubtful.

This Court need not attempt in this case to resolve the extended debate that the Usery case has inspired on the limits of spending power conditions that affect the exercise of state sovereignty, for the issue arises because of a strained and restrictive reading of the federal statute that advances no major federal program objective, but only the interests of a narrow interest group, and in fact conflicts with the federal objective, evidenced in the Intergovernmental Cooperation Act, of encouraging innovation, service integration and flexibility in state organization for administering grant programs. Moreover, the application of the statute in this case subverts a major reorganization effort of the largest

department in Florida government, adopted after substantial consideration by the State legislature.

As applied in this case, the spending power condition with these characteristics -- advancing no federal program goal, inconsistent with other federal objectives, and seriously intruding on major state internal reorganization -- seems clearly to cross the line from reasonable program conditions to displacement of state sovereignty. At the very least, the interference with the State's control over its internal operations is so severe as to warrant an application of the federal statute that avoids the Tenth Amendment issue. That opportunity is readily available in this case.

The concern of the Petitioner, in the case at bar, in preserving its right to structure its own internal governmental system, but still remain eligible for national grant-in-aid assistance for integral governmental services is not merely a hollow attempt to beat the states' rights drum.

The Petitioner has a legitimate concern that the services needed by its citizens can be more effectively delivered if the state service delivery structure is designed to meet the particular needs of a particular locale. It is the Petitioner's deeply held belief that the human service needs of Louisiana are different than those of New York City; and that different governmental organizational approaches are required in order to effectively deal with the diverse problems of the diverse states. One size does not fit all.

2. THE INTERGOVERNMENTAL COOPERATION ACT PERMITS THE SECRETARY OF HEW TO WAIVE THE ORGANIZATIONAL UNIT REQUIREMENT OF THE VOCATIONAL REHABILITATION ACT OF 1973.

The Intergovernmental Cooperation Act, 42 U.S.C. §4214, authorizes the Secretary to waive the organizational unit requirement of the Rehabilitation Act. That

section provides in pertinent part:

> "notwithstanding any other Federal law which provides that a single state agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, [any Federal agency head may] . . . waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements . . . ."

The responsible federal official must determine that the objectives of the federal program will not be endangered by waiver.

The Intergovernmental Cooperation Act waiver provision should be construed to encompass the organizational unit aspects of the Rehabilitation Act in order to further its purpose of "allow[ing] States to reorganize their structure of government in order to permit integration of State agencies and functions," to the end

of "greater flexibility, . . . more efficient and practical State governmental administration." H. Rep. No. 1845, 90th Cong., 2d Sess., 1968 Cong. & Adm. News 4225. The statutory reference to a "single State agency . . . designated to administer or supervise the administration" of a grant program accommodates the organizational unit conditions of the Rehabilitation Act, for those conditions further define the eligible single state agency for the VR program. Moreover, the VR unit meets the definition of "agency . . . designated to administer" the state's VR program. Failure to so construe the statute would preclude the full application of the broad remedial purposes of the Act so far as the Petitioner's VR program is concerned.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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A P P E N D I C E S

APPENDIX I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-2016

FLORIDA DEPARTMENT OF HEALTH
AND REHABILITATIVE SERVICES,

Plaintiff-Appellant,

versus

JOSEPH A. CALIFANO, JR., etc.,
et al.,

Defendants-Appellees.

Appeal from the United States District
Court for the Northern District
of Florida

(November 27, 1978)

Before THORNBERRY, GODBOLD, and HILL,
Circuit Judges.

PER CURIAM:

We affirm on the basis of the district court's opinion, 449 F.Supp. 274 (N.D. Fla. 1978).

AFFIRMED.

APPENDIX II

IN THE

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

TCA 77-0772

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Plaintiff,

versus

JOSEPH A. CALIFANO, JR., etc.,

Defendant.

(March 28, 1978)

Before STAFFORD, United States District Judge

STAFFORD, District Judge: This is an action for a declaratory judgment to determine the rights and duties of the parties under the Rehabilitation Act, 29 U.S.C. §701, et seq., §204 of the Intergovernmental Cooperation Act of 1968 (IGCA),

42 U.S.C. §4214, and §6(c) of the Joint Funding Simplification Act of 1974 (JFSA), 42 U.S.C. §4255(c). In addition, plaintiff seeks review of a final administrative order rendered by the Commissioner of the Rehabilitation Services Administration (RSA) under authority delegated him by the Secretary of the United States Department of Health, Education and Welfare (HEW). Federal question jurisdiction is properly founded upon 28 U.S.C. §1331 and 2201 and 29 U.S.C. §721(d).

The plaintiff, Florida Department of Health and Rehabilitative Services (HRS or Florida), is the executive department of the State of Florida charged with the duty of administering the program of vocational rehabilitation services for the handicapped within the State of Florida. Defendant Joseph A. Califano is the Secretary of HEW, the federal agency responsible, through its sub-agency RSA, for administering the grant-in-aid program established pursuant to the Rehabilitation Act, 29 U.S.C. §720, et seq. The National Rehabilitation

Association, Inc. (NRA), a national organization with an interest in the provision of rehabilitative services to handicapped persons, has been granted leave to intervene as a party defendant.

Subchapter I of the Rehabilitation Act authorizes federal grants to the states to assist them in meeting the costs of providing vocational rehabilitation services for the handicapped. 29 U.S.C. §720. While participation by a state in the federal grant program is wholly voluntary, those states which elect to receive federal funds must in each fiscal year submit an annual vocational rehabilitation plan to the Secretary meeting certain requirements set forth in 29 U.S.C. §721. There are nineteen distinct requirements that must each be satisfied.

Only the first two of these mandatory requirements are pertinent to the instant lawsuit. First, the state must "designate a State agency as the sole State agency to administer the plan, or to supervise its

administration by a local agency . . . ."
29 U.S.C. §721(a)(1)(A). It is further provided that the sole State agency in charge of administering the plan be one of three types:

> (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State . . . .

29 U.S.C. §721(a)(1)(B).

Second, if the designated state agency is of the second or third category enumerated in Section 721(a)(1)(B), as is HRS, it must

> include a vocational rehabilitation bureau, division, or other organizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible

> for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work . . . .

Section 721(b) of Title 29 mandates that the Secretary shall approve any annual state plan abiding by the nineteen conditions specified in subsection (a), and disapprove any plan failing to fulfill the stated conditions. This authority to approve or disapprove state vocational rehabilitation plans has been delegated by the Secretary to the Commissioner of RSA. 40 Fed. Reg. 5809 (Feb. 7, 1975). Prior to disapproving a state's plan, the Commissioner is required to notify the state of his intent to disapprove and to give the state reasonable notice and an opportunity for a hearing. 29 U.S.C. §721(b).

The present controversy arose when the Legislature of the State of Florida enacted legislation in 1975 reorganizing the internal structure of HRS, the designated sole

state agency in Florida for the administration of vocational rehabilitation services. Chapter 75-48, Laws of Florida 1975, Florida Statutes §20.19. This reorganization was incorporated into Florida's proposed Vocational Rehabilitation State Plan for Fiscal Year 1976 (Plan), which was submitted to RSA on January 30, 1976. On March 15, 1976, the Commissioner of RSA notified Florida of his intent to disapprove the Plan. In the Commissioner's view the Plan failed to adhere to the conditions of the Rehabilitation Act and HEW regulations promulgated thereunder because it did not satisfy the organizational unit requirement of 29 U.S.C. §721(a)(2).

A hearing on Florida's Plan was convened August 2 and 3, 1976, and October 6, 1976. The hearing officer who presided at the hearing issued a recommended decision on November 26, 1976, concluding that the Plan did not comport with the provisions of 29 U.S.C. §721(a)(2) and implementing regulations, 45 C.F.R. Part 1361. The hearing officer made the following specific findings:

(1) That the proposed Florida Plan for Vocational Rehabilitation for Fiscal Year 1976 does not provide for a full time director of the organizational unit responsible for vocational rehabilitation in Florida;

(2) That the designated director of the vocational rehabilitation organizational unit, the Program Director, lacks adequate authority and responsibility in the following areas;

(a) vocational rehabilitation services at the district and/or field level,

(b) vocational rehabilitation personnel that deliver the vocational rehabilitation services at the district and/or field level,

(c) in the interpretation and execution of plans, policies, procedures, and guidelines with respect to vocational rehabilitation programs at the district and/or field level,

(d) in the ability to take prompt corrective action for departures from established plans, policies, procedures, and guidelines of vocational rehabilitation at the district and/or field level,

(e) in the supervision of the district officials of the Florida Department of Health and Rehabilitative Services in charge of vocational rehabilitation programs and services at the district and/or field level, and

(f) over district vocational rehabilitation budgets and district cooperative agreements relating to district vocational rehabilitation activities:

(3) That the proposed Florida Plan for Fiscal Year 1976 fails to provide for clear lines of authority over vocational rehabilitation in Florida since the structure of the Florida Department of Health and Rehabilitative Services requires a shared or joint responsibility of the organizational unit by the Program Director and the district administrators with the latter officials responsible to the authority of the Assistant Secretary for Operations of the Department.

Record, Ex. 75, pp. 34-35.[1]

Florida filed exceptions to the recommended findings and conclusions, and the parties thereafter appeared before the Commissioner of RSA to present their opposing views regarding the recommendations. On

January 19, 1977, the Commissioner issued an order adopting the hearing officer's proposed findings and decision and disapproving the Florida Plan. He ordered that grants to Florida under the Act be discontinued after March 31, 1977.

On January 30, 1977, Florida Governor Reubin Askew wrote to Secretary Califano requesting a waiver of the Section 721(a)(2) organizational unit requirement. The request relied upon §204 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. §4214, and §6(c) of the Joint Funding Simplification Act of 1974, 42 U.S.C. §4255(c), as the basis for the Secretary's authority to grant such a waiver. Section 4214 of Title 42 authorizes the head of an agency having responsibility over a grant-in-aid program to waive a statutory provision requiring a state to designate a single state agency to administer the program.[2] Similarly, 42 U.S.C. §4255(c) allows waiver of "a single or specific public agency" requirement.[3]

Secretary Califano responded to Governor Askew's letter on March 24, 1977, stating that he had no authority under either IGCA or JFSA to grant the requested waiver. In the Secretary's opinion both Acts allowed waiver only of single or specific state agency requirements of grant-in-aid legislation, such as is contained in 29 U.S.C. §721(a)(1)(A), but not of the organizational unit requirement found in 29 U.S.C. §721(a)(2).

Florida instituted the present action on March 25, 1977. An administrative stay of the fund cutoff order pending a decision by this court was sought by Florida and granted by the Commissioner of RSA. Consequently, Florida has continued to receive federal vocational rehabilitation grant funding during the pendency of this lawsuit.

Currently before the court are the following motions: (1) Florida's motions for summary judgment on Count I of the complaint and for partial summary judgment on Count II; (2) the cross-motions of the Secretary and

NRA for judgment on the pleadings or for summary judgment as to all matters raised in the pleadings; (3) Florida's motion for trial de novo and to permit discovery; (4) Florida's motion for consideration of supplemental material. The defendants have affirmatively indicated no objection to the last motion, and it shall be granted.

The remaining motions raise the following issues, which shall be discussed individually below: (1) whether the provisions of IGCA and UFSA permit the Secretary to waive the organizational unit requirement of 29 U.S.C. §721(a)(2); whether the administrative decision below was predicated upon application of an erroneous standard of law; (3) whether HEW's decision was based upon an internal program instruction that should have been promulgated as a rule; (4) whether the organizational unit requirement of 29 U.S.C. §721, imposed as a condition upon Florida's receipt of federal vocational rehabilitation funds, constitutes a violation of Article IV, §4, and Amendment X of the United States Constitution; and (5) whether Florida is entitled to further discovery and a trial de

novo on the question whether extraneous political pressure influenced HEW's decision. Having considered the various motions and the memoranda of counsel, the court decides all the above issues in favor of defendants. There being no genuinely disputed issues of material fact, summary judgment for defendants is appropriate.

Florida's primary contention in this case is that, contrary to the Commissioner's ruling, both IGCA and JFSA authorize waiver of the Rehabilitation Act's organizational unit requirement. Although the pertinent provisions of IGCA and JFSA speak only in terms of allowing waiver of single state agency requirements, Florida takes the position that the organizational unit requirement of the Rehabilitation Act is subsumed within the single state agency requirement, and authority to waive the latter necessarily carries with it authority to waive the former.

Since a literal reading of the cited statutes does not support its argument,

Florida places heavy reliance upon the legislative history of IGCA and JFSA. As Florida correctly notes, passage of IGCA was generated in part by concern that requiring designation of a single state agency to administer programs supported by federal grant-in-aid funds often hindered the states in their efforts to restructure state government and coordinate administration so as to facilitate the most efficient delivery of needed services. Greater organizational flexibility at the state level was thought to be essential.[4]

Similarly, JFSA was motivated by the realization that federal grant programs tended to focus on narrow program categories and denied the states the ability to deal with social needs in a comprehensive, rather than a piecemeal, fragmented, or duplicative manner. The single state agency requirements contained in several grant-in-aid statutes[5] were perceived as particular obstacles to the integrated provision of social services. Permitting waiver of such requirements would, in the

view of witnesses who supported passage of JFSA, eliminate much of the unnecessary organizational rigidity that had been imposed upon state governments and stimulate experimentation by the states in the delivery of necessary social services.[6]

Florida reasons from the expansive statements of congressional policy contained in the legislative history that IGCA and JFSA were designed primarily to ease federal constraints on state organization of its agencies and programs. Consequently, it is claimed, the waiver provisions of those Acts should be construed broadly to encompass waiver of the 29 U.S.C. §721(a)(2) organizational unit requirement.

Florida's contention that IGCA and JFSA were designed, at least in part, to ease excessively rigid state government organizational requirements is essentially correct, as is corroborated by the legislative history of the two Acts. It may also be, as Florida emphatically argues, that the 1976 Plan embodies very nearly the

kind of laudable experimentation sought to be encouraged by Congress. It is beyond question, however, that Congress never intended by enactment of IGCA and JFSA to permit waiver of the organizational unit requirement of 29 U.S.C. §721(a)(2). A literal reading of the relevant provisions strongly militates against such an interpretation of the legislative intent. IGCA speaks only of authority to waive "a single State agency or multi-member board or commission" requirement. 42 U.S.C. §4214. To like effect is JFSA, which contemplates waiver of "single or specific public agency" requirements. 42 U.S.C. §4255(c). Neither Act refers to an organizational unit requirement such as is contained in §721(a)(2).

Moreover, the structure of the Rehabilitation Act itself casts serious doubt upon the validity of Florida's claim that the organizational unit requirement should be viewed as being subsumed within the single state agency requirement. Section 721(a) of Title 29 delineates nineteen conditions,

each of which must be individually satisfied before a state vocational rehabilitation plan may be approved by HEW. The two specific requirements at issue in this case are found in separate provisions of Section 721(a); thus, the face of the statute provides no inkling that the two provisions are so intimately connected that authority to waive one must of necessity suggest authority to waive the other.

Additionally, the purposes of the single state agency requirement and the organizational unit requirement, as gleaned from the legislative history of the Rehabilitation Act, are entirely different, raising the likelihood that Congress would not have intended to tacitly permit waiver of the latter at the same time that it authorized waiver of the former. The single state agency requirement is designed to guarantee that HEW will have one and only one state agency to hold accountable for administering and supervising the State vocational rehabilitation plan.[7] This requirement has been a component of

the Rehabilitation Act for over three decades. Amendments to the Act in 1943 included the provision that a state plan shall "designate the state board of vocational education as the sole agency for the administration, supervision and control of the State plan." P.L. 113, §2(a)(1), 78th Cong., 1st Sess. (1943). In 1954 the Act was again amended to broaden the categories of state agencies that could be designated under a state plan, including "the State agency administering or supervising the administration of vocational rehabilitation in the State, or a State rehabilitation agency (primarily concerned with vocational rehabilitation) . . . ." P.L. 565, §5(a)(2), 83d Cong., 2d Sess. (1954). Amendments in 1965 changed the Act to read as it does presently. P.L. 89-333, §8(a)(1) & (2).

It was also in 1965 that Congress first added the separate condition that where the single state agency is of the type envisioned by 29 U.S.C. §721(a)(1)(B)(ii) & (iii), it must contain an organizational unit

"primarily concerned with vocational rehabilitation, or vocational and other rehabilitation." The purpose of this condition, which is quite distinct from that of the single state agency requirement, is to prevent the state vocational rehabilitation unit and the program it administers from becoming submerged within other programs administered by the state agency.[8] Congress was concerned that there be clear lines of authority and responsibility within the state agency over the provision of rehabilitative services, and that administration of the program be the province of persons concerned almost exclusively with vocational rehabilitation and not with other social service programs. The congressional intent that the state rehabilitation unit maintain its organizational identity is embodied in the statute by the requirement of a full-time director for the unit and a staff which must devote most or all its time to vocational rehabilitation work. 29 U.S.C. §721(a)(2).

Given the divergent purposes of the single state agency and organizational unit requirements, it is wholly inappropriate

to apply the same treatment to both under IGCA and JFSA. The only reading that may properly be given the waiver provisions of IGCA and JFSA in this context is that which appears plainly upon the face of those statutes; that is, they authorize waiver only of the single state agency condition, not the organizational unit condition.[9]

The second point upon which Florida challenges the administrative ruling below is the contention that the decision was predicated upon the application of an erroneous standard of law. The scope of this court's review of the agency decision is bounded by the Administrative Procedure Act, which provides in pertinent part:

> To the extent necessary to decision and when presented, the viewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall --
>
> . . .
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --

> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> . . .
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

5 U.S.C. §706. As stated in Securities & Exchange Commission v. Chenery Corp., 332 U.S. 194, 207 (1947), the court's "duty is at an end when it becomes evident that the [agency's] action is based upon substantial evidence and is consistent with the authority granted by Congress."

Florida contests HEW's conclusion that "the Federal Act not only requires the VR organizational unit to be responsible for the state VR program, but it also requires that the director of the unit have authority and responsibility to control the functions and activities of the unit." Record, Ex. 75, p. 25. In plaintiff's view, this conclusion does not square with the language of 29 U.S.C. §721(a)(2),

which declares that the organizational unit shall be "responsible for the [state's] vocational rehabilitation program," but which does not set forth specifically the duties or authority to be possessed by the director of the unit. In particular, Florida seizes upon isolated language in the hearing officer's recommended decision to the effect that "the primary objection to the Florida Plan is the absence of an unqualified authority by the Program Director over the field VR personnel." Record, Ex. 75, p. 23 (emphasis added). Florida takes the position that the Vocational Rehabilitation Act does not require the director of the rehabilitation unit to have more than generalized authority over the program, and certainly does not require that he possess "unqualified authority" over the program and the personnel in the field. Thus, the argument goes, HEW applied an erroneous standard of law in making its ruling, and the Florida Plan, which gives direct authority over implementation of the program not to the director of the rehabilitation unit, but to district administrators

who are also in charge of supervising other social service programs, is in full conformity with the Act.

Had the administrative decision below rested upon application of a standard of "unqualified authority" as the test of compliance with §721(a)(2), this court would agree that the ruling was in error. It is manifest from a review of the decision of the Commissioner of RSA and the findings of the hearing officer, however, that this was not the legal standard applied. The hearing officer found that Florida's Vocational Rehabilitation Plan for 1976 "does not provide for a full time director of the organizational unit responsible for vocational rehabilitation in Florida." Record, Ex. 75, p. 34. Specifically, it was concluded that the designated director of the organizational unit "lacks adequate authority and responsibility" over personnel and the delivery of vocational rehabilitation services at both the district and field levels. Id. The authority of the director over the program was also found

to be deficient in several other respects. Id. at 34-35.

Despite the hearing officer's doubtlessly inadvertent use at one point of the phrase "unqualified authority," the administrative decision below rests not on whether the unit director's authority was total and without qualification, but on whether it was adequate to fulfill the directives of §721(a)(2). This was the correct legal standard. Necessarily implicit in the statutory requirement that the organizational unit have responsibility for the vocational rehabilitation program is a requirement that the director of the unit have substantial authority over the functioning of the program. Without providing substantial authority for the director over the entire operation of the program, Florida's Plan cannot comply with the intent of Congress that the program not become submerged within the other social service programs administered by the state. The diffusion of program authority that is effected by giving the district administrators primary

responsibility over the provision of services is precisely the situation Congress sought to avoid.[10] Consequently, HEW's decision to disapprove the Plan was correct.

Florida's third major contention requires little discussion. Florida alleges that HEW's decision should be overturned because it relied in part upon an interpretative memorandum that ought to have been promulgated as a rule in accordance with the rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. §551 et seq. At issue is RSA Program Instruction 75-31, which contains an agency interpretation of those portions of the Rehabilitation Act relevant to the organizational unit requirement, and a listing of those functions of the unit director deemed essential to carry out the legislative intent of the Act. HEW specifically relied upon this interpretative memorandum to some extent in disapproving Florida's Plan. See Record, Ex. 75, p. 16.

Having reviewed RSA Program Instruction 75-31, this court is of the view that it

constitutes mere interpretation, which is exempted from the rulemaking provisions of the APA. 5 U.S.C. §553. It does not deviate from the policies established by Congress in the Rehabilitation Act and by HEW in its formally promulgated regulations, nor does it create any new burdens upon those affected by its provisions or make any drastic changes in existing law. See Continental Oil Co. v. Burns, 317 F. Supp. 194 (D. Del. 1970). Consequently, HEW did not err in issuing the memorandum without formal promulgation under the APA or in relying upon the memorandum in making the decision presently under review.

For its fourth point of contention Florida asserts that the Rehabilitation Act, to the extent it conditions receipt of federal grant monies on the adoption by a state of a particular governmental structure, constitutes an invalid encroachment upon the powers and prerogatives of the states in derogation of Article IV, §4,[11] and Amendment X of the United States Constitution.[12] This contention relies heavily, if not exclusively, upon

the Supreme Court's ruling in National League of Cities v. Usery, 426 U.S. 833 (1976). That decision held that extension of the minimum wage and maximum hours provisions of the Fair Labor Standards Act to employees of the states and their political subdivisions violated the Tenth Amendment. The majority opinion noted that "the Act displaces state policies regarding the manner in which they will structure delivery of those governmental services which their citizens require." Id. at 847.

The defendants respond that National League of Cities is inapposite to the facts and issues in the case at bar, and that consequently Florida's reliance on that decision is misplaced. They point to other federal decisions, most of them prior to National League of Cities, which establish that Congress has the power to fix conditions upon receipt by the states of federal grant funds, even though the legislation may to some degree intrude upon areas traditionally left to the discretion of the states under the Tenth Amendment. In Oklahoma v. United

States Civil Service Commission, 330 U.S. 127 (1947), the Supreme Court upheld a provision of the Hatch Act authorizing termination of grant-in-aid funds to any state which fails to discharge a state employee involved in partisan political activities. Mr. Justice Reed, writing for the court, reasoned:

> While the United States is not concerned with, and has no power to regulate, local political activities as such of state officials, it does have power to fix the terms upon which its money allotment to states shall be disbursed.
>
> The Tenth Amendment does not forbid the exercise of this power in the way that Congress has proceeded in this case. As pointed out in United States v. Darby, 312 U.S. 100, 124, the Tenth Amendment has been consistently construed "as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end."

Id. at 143 (emphasis added). The Oklahoma case has been consistently followed by the lower federal courts in determining that

Congress has the authority to attach conditions upon monetary grants to the states, in spite of countervailing considerations of the Tenth Amendment. Florida v. Matthews, 526 F. 2d 319 (5th Cir. 1976); Arizona State Dep't. of Public Welfare v. Department of Health, Education, and Welfare, 449 F. 2d 456 (9th Cir. 1971); Dupler v. City of Portland, 421 F. Supp. 1314 (D. Maine 1976).

The contentions advanced by the parties necessitate harmonizing National League of Cities with Oklahoma and its progeny. This task is not a difficult one for this court to discharge. The Supreme Court stated its essential holding in National League of Cities as follows:

> This exercise of congressional authority does not comport with the federal system of government embodied in the Constitution. We hold that insofar as the challenged amendments operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions, they are not within the authority granted Congress by Art. I, §8, cl. 3 [the commerce clause].

Id. at 852 (emphasis added). As seen from the above quotation, the narrow holding in National League of Cities is restricted to disapproval of congressional enactments that "directly displace" the power of the states to organize their own governments as they see fit. This rationale has no application to a case like the present one where the federal intrusion is wholly indirect and limited to measures meant to insure the proper functioning of federally funded programs.

Moreover, the Supreme Court declined in National League of Cities to express any "view as to whether different results might obtain if Congress seeks to affect integral operations of state government by exercising authority granted it under other sections of the Constitution such as the spending power, Art. I, §8, cl. 1, or §5 of the Fourteenth Amendment." Id. at 852 n. 17. Federally imposed restraints on state and local government activities which accompany federal grants to the states have in fact long been regarded as

unobjectionable exercises of Congress' constitutional spending power. As the Court of Appeals for this Circuit held in Florida v. Matthews, supra:

> Likewise appellants' Tenth Amendment objections are without merit. Congress and the Secretary have not attempted to establish a federal licensing board in an attempt to prevent the states from regulating nursing home administrators. Instead, the statute and regulation merely establish terms and conditions under which federal assistance will be provided to states that elect to participate in the nursing home component of the medicaid program. The only effect of the statute and regulation is to induce, but not require, a state to license its nursing home administrators in a specified manner; this inducement does not infringe upon any power reserved to the state under the Tenth Amendment.
>
> . . .
>
> Once a state chooses to participate in a federally funded program, it must comply with federal standards.

526 F. 2d at 326. See also Dupler v. City of Portland, supra.

The conclusion that the requirements of 29 U.S.C. §721(a)(2) are within the proper scope of the congressional spending power and are not constrained by the Tenth Amendment is further fortified by the purely voluntary nature of the requirements. Congress, through the Rehabilitation Act, has extended substantial grants-in-aid to the states as an inducement for their participating in a shared program providing vocational rehabilitation services to the handicapped. This inducement carries with it certain conditions Congress deems essential to the functioning of the program; however, any state which objects to the "strings" attached to receipt of the federal funds has the option to refuse both the grants-in-aid and the objectionable conditions. The Act does not impose a set of coercive, mandatory requirements such as were involved in National League of Cities. The remarks of the district court in Dupler, supra, are amply persuasive:

> In addition, the operation and practical effect of the federal statute is very different here than in National League of Cities.

> Unlike the FLSA amendments, which the states had no choice but to obey, the requirements of the Federal Food Stamp Act are not mandatory, but are impressed on state and local governments only as a condition of participation in the food stamp program. The decision whether to participate is voluntary with the states . . . . Since there is no requirement that a state participate, there is no coercion and thus no possible interference with state sovereignty. See Steward Machine Co. v. Davis, 301 U.S. 548, 586-90, 57 S. Ct. 883, 81 L. Ed. 1279 (1937).

421 F. Supp. at 1320-21 n. 8.

Accordingly, it is the opinion of this court, and the court so holds, that the conditions imposed upon the states pursuant to 29 U.S.C. §721(a)(2) prior to their eligibility for federal grant funds under the Rehabilitation Act do not offend either the Tenth Amendment or the guarantee of a republican form of government for the states contained in Art. IV, §4 of the United States Constitution.

Florida has also moved for a trial de novo in this court plus further discovery on the issue, initially raised in the administrative

proceedings below, of whether improper political pressure was applied to HEW during the time Florida's Plan was under review. See D. C. Federation of Civic Associations v. Volpe, 459 F. 2d 1231 (D. C. Cir. 1972); Texas Medical Association v. Mathews, 408 F. Supp. 303 (W. D. Tex. 1976). Florida places special emphasis upon a letter from Congressman John Brademas, Chairman of the House Subcommittee on Select Education, to then-Secretary of HEW David Mathews dated October 7, 1975. In this letter Congressman Brademas expressed his concern and the Committee's belief that the Florida Plan was not in conformity with the Rehabilitation Act and the expressed intent of Congress in passing the Act. Florida contends that this letter provides evidence of extraneous political pressure sufficient to warrant this court's undertaking the extraordinary procedure of re-opening discovery and conducting a judicial trial de novo to determine whether improper congressional influence affected HEW's decision.

Despite its strenuous efforts, Florida has shown no reason why this court should

make further inquiry into this matter. The primary reason why Florida's motion should be denied is that a trial de novo is precluded by the applicable provision of the Administrative Procedure Act, 5 U.S.C. §706, which limits judicial review of agency proceedings to review of the administrative record. United States v. Bianchi & Co., 373 U.S. 709, 715 (1963).

Further, the record below demonstrates that Florida had an ample opportunity to conduct discovery on this issue and to present all available evidence during the administrative hearing. Extensive use of interrogatories and depositions of HEW and NRA officials evidently uncovered scant intimations of unwarranted influence, for there is nothing in this record to suggest that political considerations actually tainted the decision below. Florida's motion merely seeks a repetitive round of discovery and another hearing on matters already fully presented at the administrative level.

As far as the Brademas letter is concerned, this single item of correspondence raises no inference of impropriety. In Federation of Civic Associations v. Volpe and Texas Medical Association v. Mathews, supra, the extrinsic pressure that was alleged to have affected the agency action consisted of coercion of the most virulent kind -- threats of loss of agency funding or of the job of the agency official charged with making the decision. The Brademas letter, which is the only arguable indication of political influence found by Florida as a result of extensive discovery, is of a much different character. It contains no threats of adverse action against HEW or its officials. On the contrary, it merely expresses Congressman Brademas' concern that HEW might grant the waiver desired by Florida, an action which he believed would be contrary to the legislative intent.

Moreover, the letter was not directed to the Commissioner of RSA, who had actual responsibility for approving or disapproving the Florida Plan, but to the Secretary,

who at the time had before him only Florida's request for a waiver of the organizational unit requirement pursuant to IGCA or JFSA. The letter has no relation to the final decision under review here, particularly since Florida has adduced no proof that the Commissioner was aware of, or influenced by, contact between the Secretary and Congressman Brademas. In fact, HEW has produced internal memoranda and affidavits signed by Andrew S. Adams, then-Commissioner of RSA, and Frederick Sachs, Assistant Commissioner for Program Management of RSA, which tend to substantiate that no improper influence affected the Commissioner's decision. Florida has not attempted to rebut this documentary evidence.

Florida having failed to support its claim relating to possible extraneous political influence, there is no cause for this court to grant the motion for trial de novo and further discovery.

Having reviewed the administrative record, and having considered the motions

and the memoranda of counsel, it is the opinion of this court that the decision of the Commissioner of RSA disapproving Florida's Vocational Rehabilitation Plan for Fiscal Year 1976 is not in error under the applicable law and regulations. Consequently, defendants' motions for summary judgment should be granted, and the administrative ruling under review should be upheld.

ORDER

In accordance with the foregoing memorandum opinion, it is ORDERED AND ADJUDGED that:

1. Florida's motion for consideration of supplemental material be, and the same hereby is, GRANTED.

2. Florida's motion for summary judgment on Count I of the complaint and motion for partial summary judgment on Count II of the complaint be, and the same hereby are, DENIED.

3. Florida's motion for trial de novo and to permit discovery be, and the same hereby is, DENIED.

4. The motions of HEW and NRA for summary judgment be, and the same hereby are, GRANTED. Judgment shall be entered in favor of defendants declaring that the administrative decision below is affirmed in all material respects.

DONE AND ORDERED this 28th day of March, 1978.

WILLIAM STAFFORD, U.S. DISTRICT JUDGE

FOOTNOTES FOLLOW

FOOTNOTES:

1. All citations in this opinion to the administrative record shall be by reference to the relevant exhibit and page numbers.

2. 42 USC §4214 provides:

> Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements.

3. 42 U.S.C. §4255(c) provides:

> In promoting the more effective and efficient use of Federal assistance resources, Federal agency heads may waive requirements that a single or specific public agency be utilized or designed to receive, supervise, or otherwise administer a part of the Federal assistance drawn upon by any jointly funded project to the extent that administration by another public agency is determined to be fully consistent with applicable State or local law and with the objectives of the Federal assistance program involved. This authority may be exercised only (1) upon request of the head of a unit of general government, with respect to agencies that he certifies to be under his jurisdiction, or (2) with the agreement of the several State or local public agencies concerned.

4. See hearings on H.R. 16718 and Related Bills Before the Subcommittee on Intergovernmental Relations, Committee on Governmental Operations, 90th Cong., 2d Sess., 87, 116, 121, 148-49 (1968).

5. See,e.g., 42 U.S.C. §602(a)(3) (Aid to Families with Dependent Children); 42 U.S.C. §705(a)(2) (Maternal and Child Health); 20 U.S.C. §1263(a)(2) (Vocational Education).

6. See Hearings Before the Intergovernmental Relations Subcommittee of the House of Representatives Committee on Government Operations, 93d Cong., 2d Sess.,

1-2, 217, 267 (1974).

7. See S. Rep. No. 1456, 90th Cong., 2d Sess., 16 (1968).

8. See H. R. Rep. No. 432, 89th Cong., 1st Sess., 13-14 (1965); Hearings on S. 1525 Before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 89th Cong., 1st Sess. 42-43 (1965).

9. A subsidiary issue between the parties is whether JFSA permits waiver only of administrative, but not of statutory, requirements. The court's ruling that 42 U.S.C. §4255(c) does not contemplate waiver of the organizational unit requirement (even if waiver of statutory requirements is permitted) renders decision of this question unnecessary.

10. The congressional intent is further fleshed out by HEW regulations detailing the requirements a state plan must meet to satisfy the organizational unit requirement. 45 C.F.R. Part 1361. The decision and findings below were fully in accord with these regulations, and Florida has not challenged their validity.

11. Art. IV, §4, of the United States Constitution provides:

> The United States shall guarantee to every State in this Union a Republican Form of Government

and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic violence.

12. The Tenth Amendment states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

13. The dissenting opinion of three Justices in National League of Cities provides additional support for this court's reading of that decision. Apparently it was the understanding of the dissenters that the majority did not intend to rule out Congress' ability to condition receipt of grants-in-aid on compliance with federally imposed restrictions on state government. 426 U.S. at 880 (Brennan, J., dissenting).

APPENDIX III

United States Code, Title 29:

§721. State plans

(a) Annual State plans; general and specific requirements

For each fiscal year in which a State desires to participate in programs under this subchapter, a State shall submit to the Secretary for his approval an annual plan for vocational rehabilitation services which shall--

(2) State rehabilitation bureau; director; staff; major organizational status; separate units for services to the blind and for other services

provide, except in the case of agencies described in clause (1)(B)(i)--

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other organizational unit which

(i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

APPENDIX IV

United States Code, Title 42:

§4214. Eligible State agency

Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the

Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 1979, three copies of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit were mailed, postage prepaid, to CARL HARPER, Regional Attorney, Department of Health, Education & Welfare, Rm. 323, 50 7th St., N.E., Atlanta, Georgia 30323; CLINTON ASHMORE, Assistant U.S. Attorney, Federal Bldg., Tallahassee, Florida 32302; ALLEN SNYDER, Attorney for National Rehabilitation Assoc., 815 Connecticut Ave., N.W., Washington, D.C. 20006; and THE SOLICITOR GENERAL, Department of Justice, Washington, D.C. 20530.

GEORGE LEE WAAS
Assistant General Counsel

Of Counsel for Petitioner